

Department of Land Conservation and Development
635 Capitol St NE, Suite 150
Salem, OR 97301

CERTIFICATE OF SERVICE

I certify that I served the attached M122713 PEACORE & MATHIS
Amended FINAL ORDER Parts A, B, C, and FINAL STAFF REPORT
AND RECOMMENDATIONS on:

(See Attached List)

by mailing a full, true and correct copy in a sealed, first-class postage-
prepaid envelope, addressed to the person(s) listed above, and deposited
with the United States Postal Service at Salem, Oregon, on the date set forth
below.

DATED this 19 day of April, 2007.

Name: MARCO ZILLNER
Measure 37 Support Specialist

4/18/2007

M122713 Dehlinger Trust (1810)

William M. Ganong, Attorney at Law
514 Walnut Avenue
Klamath Falls, OR 97601

JON JININGS, REGIONAL REPRESENTATIVE
DLCD
888 NW HILL ST, Suite 3
Bend OR 97701

Denise Diane Mathis, Trustee of Trusts
12671 Hill Road
Klamath Falls, OR 97603

Mary Kyle McCurdy, Staff Attorney
1000 Friends of Oregon
534 SW 3rd Avenue, Suite 300
Portland, OR 97204-2597

Maralea and Jerry Peacore
13751 Hill Road
Klamath Falls, OR 97603

Justin Throne, Attorney
280 Main Street
Klamath Falls, OR 97601

Alwin Turiel, Planning Director
Klamath County Planning Dept.
305 Main St.
Klamath Falls OR 97601-6332

Pat Wheeler
CIAC
12090 Rolling Hills Road
Monmouth, OR 97361

Ginny Gustafson, AAG
Department of Justice
1162 Court St. NE
Salem, OR 97301-4095

Jim Johnson, Land Use Planning Coordinator
Oregon Dept. of Agriculture
635 Capitol St. NE, Ste 100
Salem, OR 97301-2532

William M. Ganong, Attorney at Law
514 Walnut Avenue
Klamath Falls, OR 97601

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12671 Hill Road
Klamath Falls, OR 97603

Mary Kyle McCurdy, Staff Attorney
1000 Friends of Oregon
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Justin Throne, Attorney
280 Main Street
Klamath Falls, OR 97601

Alwin Turiel, Planning Director
Klamath County Planning Dept.
305 Main St.
Klamath Falls OR 97601-6332

Pat Wheeler
CIAC
12090 Rolling Hills Road
Manhattan, OR 97631

Salem, OR 97301-4050

Jim Johnson, Land Use Planning Coordinator
Oregon Dept. of Agriculture
635 Capitol St. NE, Ste 100
Salem, OR 97301-2532



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2524

Phone: (503) 373-0050

First Floor/Costal Fax: (503) 378-6033

Second Floor/Director's Office: (503) 378-5518

Web Address: <http://www.oregon.gov/LCD>

April 19, 2007

Denise Mathis
12671 Hill Road
Klamath Falls, OR 97603



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M122713
Amended Final Report and Amended Final Order*

Claimants: Jerry and Maralea Peacore and Denise Mathis

Dear Mr. Mathis:

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Amended Final Staff Report and Recommendation A, B and C of the Department of Land Conservation and Development, and the Amended Final Orders A, B and C.

The Amended Final Staff Report and Recommendation A, B and C and the Final Orders A, B and C constitute the final decisions on this claim. No further action will be taken on this matter.

Thank you for your courtesies.

Yours very truly,

Michael Morrissey, Manager
Measure 37 Services Division

Enclosure



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Department of Land Conservation and Development

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April 19, 2007

Jerry and Maralea Peacore
13751 Hill Road
Klamath Falls, OR 97603



*Re: Ballot Measure 37 (ORS 197.352) Claim Number M122713
Amended Final Report and Amended Final Order*

Claimants: Jerry and Maralea Peacore and Denise Mathis

Dear Mr. and Ms. Peacore:

Enclosed, in regard to the above-referenced claim for compensation under Ballot Measure 37 (ORS 197.352), is the Amended Final Staff Report and Recommendation A, B and C of the Department of Land Conservation and Development, and the Amended Final Orders A, B and C.

The Amended Final Staff Report and Recommendation A, B and C and the Final Orders A, B and C constitute the final decisions on this claim. No further action will be taken on this matter.

Thank you for your courtesies.

Yours very truly,

Michael Morrissey, Manager
Measure 37 Services Division

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April 19, 2007

To: Interested Persons

From: Lane Shetterly, Director



Re: Ballot Measure 37 (ORS 197.352) Claim Number M122713

Claimants: Jerry and Maralea Peacore and Denise Mathis

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4/18/2007

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Oregon Dept. of Agriculture
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Salem, OR 97301-2532

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR)	AMENDED FINAL ORDER A
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M122713
(BALLOT MEASURE 37) OF)	
Maralea A. Peacore and)	
Denise Diane Mathis, CLAIMANTS)	

Claimants: Maralea A. Peacore and Denise Diane Mathis (the Claimants)

Property: Township 39S, Range 10E, Section 10: tax lots 1500 and 2100, Section 7: tax lot 100, Section 8: tax lot 1900
Township 40S, Range 10E, Tax lot 1300 (no section), Section 8: tax lot 100, Section 9: tax lots 800 and 801, Section 16: tax lot 100, Section 32: tax lots 600, 700, 900, and 1000
Klamath County (the Property)

Claim: The demand for compensation and any supporting information received from the Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This amended order is based on the record herein, including the Findings and Conclusions set forth in the Amended Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this amended order.

AMENDED ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants':

- division of tax lot 100 (section 7) into one- to two-acre parcels and division of tax lots 700, 900 and 1000 into forty-acre parcels, and to their development of a dwelling on each parcel: applicable provision of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after July 12, 2000;
- division of tax lots 100 (section 8) and 800 into two- to five-acre parcels, division of tax lots 100 (Section 16) and 801 into five-acre parcels and division of tax lots 600 and 1300

into forty-acre parcels, and to their development of a dwelling on each parcel: applicable provision of Goals 3 and 4, ORS 215 and OAR 660, division 6, and 33, enacted or adopted after July 12, 2000;

- division of tax lot 1900 into two- to five-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 14 and OAR 660-004-0040 adopted after July 12, 2000; and
- division of tax lots 1500 and 2100 into ten-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 14 adopted after July 12, 2000.

These laws will not apply to the claimants only to the extent necessary to allow them to use the these tax lots for the use described in this report, and only to the extent that use was permitted when they acquired each of these tax lots. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow the claimants to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on July 12, 2000. At that time: 1) tax lots 100 (section 7), 700, 900 and 1000 were subject to Goal 3 and OAR 660, division 5, as implemented by Klamath County's acknowledged EFU zone, and applicable provisions of ORS 215 then in effect; 2) tax lots 100 (section 8), 100 (section 16), 600, 800, 801 and 1300 were subject to Goals 3 and 4 and applicable provisions of OAR 660 divisions 5, and 6, as implemented by Klamath County's comprehensive plan and applicable provisions of ORS 215 then in effect; 3) tax lot 1900 was subject to applicable provisions of Goal 14, as implemented through Klamath County's acknowledged comprehensive plan; and 4) tax lots 1500 and 2100 (as designated rural land) were subject to Klamath County's acknowledged comprehensive plan and Goal 14.

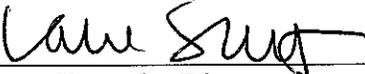
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the amended order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the amended order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this amended order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

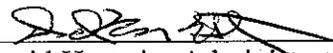
This Amended Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:



Lane Shetterly, Director
DLCD
Dated this 19th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:



David Hartwig, Administrator
DAS, State Services Division
Dated this 19th day of April, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this amended order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352¹, the present owner of

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Amended Final Staff Report and Recommendation

April 19, 2007

STATE CLAIM NUMBER: M122713
Report A¹

NAMES OF CLAIMANTS: Maralea A. Peacore
Denise Diane Mathis

MAILING ADDRESS: Maralea A. Peacore
13751 Hill Road
Klamath Falls, Oregon 97603

Denise Diane Mathis
12671 Hill Road
Klamath Falls, Oregon 97603

PROPERTY IDENTIFICATION: Township 39S, Range 10E
Section 10: tax lots 1500 and 2100
Section 7: tax lot 100
Section 8: tax lot 1900

Township 40S, Range 10E
Tax lot 1300 (no section)
Section 8: tax lot 100
Section 9: tax lots 800
Section 16: tax lot 100 and 801
Section 32: tax lots 600, 700, 900 and 1000

Klamath County

DATE RECEIVED BY DAS: October 11, 2005

180-DAY DEADLINE: August 26, 2006²

¹ Sixteen tax lots were identified in claim M122713. This staff report only addresses the tax lots identified above. The remaining tax lots are addressed in companion staff reports B and C.

² This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

I. SUMMARY OF CLAIM

The claimants, Maralea Peacore and Denise Diane Mathis, seek compensation in the amount of \$15,020,000 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide: 1) tax lot 100 (section 7) consisting of 134.70 acres into one- to two-acre parcels, 2) tax lots 100 (section 8), 800 and 1900 consisting of 177.82 acres into two- to five-acre parcels, 3) tax lots 100 (section 16) and 801 consisting of 221.87 acres into five-acre parcels, 4) tax lots 1500 and 2100 consisting of 208.20 acres into ten-acre parcels and 5) tax lots 600, 700, 900, 1000 and 1300 consisting of 400 acres into forty-acre parcels. The claimants also desire to develop a dwelling on each parcel. The subject property, which includes all of the tax lots addressed in this report, is located at the geographic coordinates listed above in Klamath County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to the claimants':

- division of tax lot 100 (section 7) into one- to two-acre parcels and division of tax lots 700, 900 and 1000 into forty-acre parcels, and to their development of a dwelling on each parcel: applicable provision of Statewide Planning Goal 3 (Agricultural Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, division 33, enacted or adopted after July 12, 2000;
- division of tax lots 100 (section 8) and 800 into two- to five-acre parcels, division of tax lots 100 (section 16) and 801 into five-acre parcels and division of tax lots 600 and 1300 into forty-acre parcels, and to their development of a dwelling on each parcel: applicable provision of Goals 3 and 4 (Forest Lands), ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after July 12, 2000;
- division of tax lot 1900 into two- to five-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 14 (Urbanization) and OAR 660-004-0040 adopted after July 12, 2000; and
- division of tax lots 1500 and 2100 into ten-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 14 adopted after July 12, 2000.

These laws will not apply to the claimants only to the extent necessary to allow them to use the listed tax lots for the use described in this report, and only to the extent that use was permitted when they acquired each of these tax lots. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow the claimants to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 8, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice. The comment is relevant to when the claimants became the present owners of the subject property. The comment has been considered by the department in preparing this report. (See the comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on October 11, 2005, for processing under OAR 125, division 145. The claim identifies "all land use regulations and laws enacted after October 24, 1960" as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for "owners" as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines "owner" as "the present owner of the property, or any interest therein."

Findings of Fact

The claimants' parents, Clyde L. and Georgia R. Dehlinger, acquired the subject property on October 14, 1960, as reflected by a warranty deed included with the claim. On December 15, 1986, the Dehlingers transferred the property to themselves as trustees of the Clyde L. Dehlinger Trust and the Georgia C. Dehlinger Trust. Under the terms of the trusts, the claimants, Maralea Peacore and Denise Diane Mathis, were designated to serve as successor trustees when and if the Dehlingers both were unable to serve. An Attorney's Certification, dated July 12, 2000, confirms that as of July 12, 2000, Clyde Dehlinger was deceased and Georgia Dehlinger was unable to serve as trustee and, therefore, the claimants were serving as co-trustees.

On March 12, 2001, the claimants transferred the interest of the trustees of the Clyde L. Dehlinger Trust to the trustees of the Georgia L. Dehlinger Trust, as reflected by a bargain and sale deed included with the claim.³ A January 11, 2005, preliminary title report submitted with the claim establishes the claimants' current ownership of the subject property, as trustees of the Georgia L. Dehlinger Trust..

Conclusions

The claimants, Maralea Peacore and Denise Diane Mathis, are "owners" of the subject property as that term is defined by ORS 197.352(11)(C), as of July 12, 2000. Clyde L. and Georgia R. Dehlinger are "family members" as defined by ORS 197.352(11)(A) and acquired the subject property on October 14, 1960.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants' use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to 1) divide tax lot 100 (section 7) into one- to two-acre parcels, 2) divide tax lots 100 (section 8), 800 and 1900 into two- to five-acre parcels, 3) divide tax lots 100 (section 16) and 801 into five-acre parcels, 4) divide tax lots 1500 and 2100 into ten-acre parcels and 5) divide tax lots 600, 700, 900, 1000 and 1300 into forty-acre parcels. The claim also indicates the claimants' desire to develop a dwelling on each of the resulting parcels, and that the desired use of each of these tax lots is not allowed under current regulations.⁴

³ Transfer of property to a revocable trust does not result in a change in ownership for the purposes of ORS 197.352.

⁴ The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' property or do not restrict use of the claimants' property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

The claim is based generally on the applicable provisions of state law that require Exclusive Farm Use (EFU), Forestry/Range (FR), Rural Residential (R5) and Non-Resource (NR) zoning, and restrict uses in those zones.

Tax lots 100 (section 7), 700, 900 and 1000 are zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.⁵ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for the development of dwellings on existing or any proposed parcel on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704, Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Tax lots 100 (section 8), 100 (section 16), 600, 800, 801 and 1300 are zoned FR, which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.⁶ Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under EFU zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Klamath

⁵ The claimants' property is "agricultural land" because it contains National Resources Conservation Service Class I-IV soils.

⁶ No information was provided to the department regarding the predominant use of the property on January 1, 1993.

County's FR zone is 80 acres. Tax lots 100 (section 8), 100 (section 16), 600, 800, 801 and 1300 cannot be divided into parcels smaller than 80 acres.

Tax lot 1900 is zoned R5. The county's R5 zone is a rural residential zone consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses.

Goal 14 was effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,⁷ the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

OAR 660-004-0040 states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect (OAR 660-004-0040(7)(c)). Some relief from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-04-0040(6)). Because Klamath County's residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for any new lot or parcel must equal or exceed five acres.

Tax lots 1500 and 2100 are zoned NR. The purpose of the NR zone is to implement the non-resource land use designation of Klamath County's comprehensive plan.⁸ Non-resource lands are designated rural lands that are not subject to Goal 3 or 4. The NR zone establishes a 20-acre minimum for new parcels and allows single-family dwellings. As rural lands available for residential use, they are subject to Goal 14.

The claimants' family first acquired the subject property in 1960, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1960.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660-004-0040 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimants' family acquired the subject property. These laws restrict the use of the subject property relative to the uses allowed when the claimants' family acquired the property in 1960.

⁷ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

⁸ These are lands that have been found to have a low forest site class value, are predominantly SCS soil capability class VII and VIII, are not identified as important fish and wildlife habitat, are not necessary for watershed protection or recreational use, are not irrigated or irrigable or are not necessary to permit farm or forest practices to be undertaken on adjacent or nearby lands.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have “the effect of reducing the fair market value of the property, or any interest therein.”

Findings of Fact

The claim includes an estimate of \$15,020,000⁹ as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the property. This amount is based on the claimants’ assessment of the subject property’s value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Maralea Peacore and Denise Diane Mathis whose family members acquired the subject property in 1960. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants’ family acquired the subject property restrict the claimants’ desired use of the property. The claimants estimate that the effect of the regulations on the fair market value of the subject property is a reduction of \$15,020,000.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants’ family acquired the property.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property relative to the uses permitted when the claimants’ family acquired the property, including applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660-004-0040 and OAR 660, divisions 6, and 33, which Klamath County has implemented through its current EFU, FR, R5 and NR zones. All of these land use regulations were enacted or adopted after the claimants’ family acquired the subject property.

⁹ This figure represents a total of each amount submitted for 13 tax lots.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants' family acquired the property on October 14, 1960. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimants' family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$15,020,000. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when their family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Maralea Peacore and Denise Diane Mathis to use the subject property for a use permitted at the time they acquired the property on July 12, 2000.

At the time the claimants acquired tax lots 100 (section 7), 700, 900 and 1000, the property was subject to Klamath County's acknowledged EFU zone and the applicable provisions of Goal 3, OAR 660, division 33 and ORS 215 currently in effect, as described above in Section V.(2) of this report.

At the time the claimants acquired tax lots 100 (section 8), 100 (section 16), 600, 800, 801 and 1300, the property was subject to Klamath County's acknowledged FR zone and the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33 currently in effect, as described I Section V.(2) of this report.

At the time the claimants acquired tax lot 1900 it was subject to Klamath County's acknowledged comprehensive plan. Residential development of tax lot 1900 at that time would have been subject to the provisions of the county's comprehensive plan and land use ordinances, including the provision of Goal 14 implemented by those regulations.

At the time the claimants acquired tax lots 1500 and 2100, they were zoned NR by Klamath County, which limited lot sizes to a minimum of 20 acres.

In addition to the applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660-004-0040 and OAR 660, divisions 5 and 6, in effect when the claimants acquired the property, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to the claimants':

- division of tax lot 100 (section 7) into one- to two-acre parcels and division of tax lots 700, 900 and 1000 into forty-acre parcels, and to their development of a dwelling on each parcel: applicable provision of Goal 3, ORS 215 and OAR 660, division 33, enacted or adopted after July 12, 2000;
- division of tax lots 100 (section 8) and 800 into two- to five-acre parcels, division of tax lots 100 (Section 16) and 801 into five-acre parcels and division of tax lots 600 and 1300 into forty-acre parcels, and to their development of a dwelling on each parcel: applicable provision of Goals 3 and 4, ORS 215 and OAR 660, division 6, and 33, enacted or adopted after July 12, 2000;
- division of tax lot 1900 into two- to five-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 14 and OAR 660-004-0040 adopted after July 12, 2000; and

- division of tax lots 1500 and 2100 into ten-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goal 14 adopted after July 12, 2000.

These laws will not apply to the claimants only to the extent necessary to allow them to use the these tax lots for the use described in this report, and only to the extent that use was permitted when they acquired each of these tax lots. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow the claimants to use the subject property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on July 12, 2000. At that time: 1) tax lots 100 (section 7), 700, 900 and 1000 were subject to the provisions of Goal 3, ORS 215 and OAR 660, division 33 currently in effect; 2) tax lots 100 (section 8), 100 (section 16), 600, 800, 801 and 1300 were subject to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660 divisions 6 and 33 currently in effect; 3) tax lot 1900 was subject to applicable provisions of Goal 14, as implemented through Klamath County's acknowledged comprehensive plan; and 4) tax lots 1500 and 2100 (as designated rural land) were subject to Klamath County's acknowledged comprehensive plan and the provisions of Goal 14 then in effect.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the amended order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the amended order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this amended order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 3, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR)	AMENDED
)	FINAL ORDER B
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M122713
(BALLOT MEASURE 37) OF)	
Jerry J. and Maralea A. Peacore, CLAIMANTS)	

Claimants: Jerry J. and Maralea A. Peacore (the Claimants)

Property: Township 40S, Range 10E, Section 8, Tax lot 101, Klamath County
(the Property)

Claim: The demand for compensation and any supporting information received from the
Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This amended order is based on the record herein, including the Findings and Conclusions set forth in the Amended Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this amended order.

AMENDED ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Jerry and Maralea Peacore's division of the 20-acre subject property two- to five-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimant acquired the property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Maralea Peacore acquired the property on July 12, 2000, and when Jerry Peacore acquired the property on February 13, 2003. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow claimants to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Maralea Peacore acquired the property on July 12, 2000, and when Jerry Peacore acquired it on February 13, 2003. On July 12, 2000 and on February 13, 2003, the property was subject to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, currently in effect.

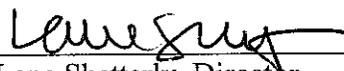
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the amended order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the amended order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

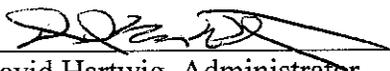
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this amended order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

This Amended Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:


Lane Shetterly, Director
DLCD
Dated this 19th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 19th day of April, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352¹, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Amended Final Staff Report and Recommendation

April 19, 2007

STATE CLAIM NUMBER: M122713
Report B¹

NAMES OF CLAIMANTS: Jerry J. and Maralea A. Peacore

MAILING ADDRESS: 13751 Hill Road
Klamath Falls, Oregon 97603

PROPERTY IDENTIFICATION: Township 40S, Range 10E, Section 8
Tax lot 101
Klamath County

DATE RECEIVED BY DAS: October 11, 2005

180-DAY DEADLINE: August 26, 2006²

I. SUMMARY OF CLAIM

The claimants, Jerry and Maralea Peacore, seek compensation in the amount of \$2 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 20-acre subject property into two- to five-acre parcels and to develop a dwelling on each parcel. The subject property is located at 13751 Hill Road, near Klamath Falls, in Klamath County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Jerry and Maralea Peacore's division of the 20-acre subject property two- to five-acre parcels and to develop a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon

¹ Sixteen tax lots were identified in claim M122713. This staff report only addresses the tax lot identified above. The remaining tax lots are addressed in companion staff reports A and C.

² This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

Administrative Rules (OAR) 660, divisions 6, and 33, enacted or adopted after the claimants acquired the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Maralea Peacore acquired the property on July 12, 2000, and when Jerry Peacore acquired the property on February 13, 2003. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 8, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice. The comment is relevant to when the claimants became the present owners of the subject property. The comment has been considered by the department in preparing this report. (See the comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on October 11, 2005, for processing under OAR 125, division 145. The claim identifies "all land use regulations and laws enacted after October 24, 1960" as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

Claimant Maralee Peacore’s parents, Clyde L. and Georgia R. Dehlinger, acquired the subject property on October 14, 1960, as reflected by a warranty deed included with the claim. On December 15, 1986, the Dehlingers transferred the property to themselves as trustees of the Clyde L. Dehlinger Trust and the Georgia C. Dehlinger Trust. Under the terms of the trusts, claimant, Maralee Peacore and Denise Diane Mathis, were designated to serve as successor trustees when and if the Dehlingers both were unable to serve. An Attorney’s Certification, dated July 12, 2000, confirms that as of July 12, 2000, Clyde was deceased and Georgia Dehlinger was unable to serve as trustee and, therefore, claimant Maralee Peacore and Denise Diane Mathis were serving as co-trustees

On February 13, 2003, claimant Maralee Peacore and Denise Diane Mathis conveyed an interest in the subject property to claimant Jerry Peacore, as reflected by a bargain and sale deed included with the claim. A January 11, 2005, preliminary title report submitted with the claim establishes the claimants’ current ownership of the subject property.

Conclusions

The claimants, Jerry and Maralee Peacore, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C). Maralee Peacore acquired the subject property on July 12, 2000. Jerry Peacore acquired the subject property on February 13, 2003. Clyde L. and Georgia R. Dehlinger are “family members” as defined by ORS 197.352(11)(A) and acquired the subject property on October 14, 1960.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants’ use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

Findings of Fact

The claim indicates that the claimants desire to divide the 20-acre subject property into two- to five-acre parcels and to develop a dwelling on each parcel, and that their desired use is not allowed under current regulations.³

The claim is based generally on the applicable provisions of state law that require forest zoning. The claimants' property is zoned Forestry Range (FR) zone by Klamath County, which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.⁴ Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Klamath County's FR zone is 80 acres. The claimant's property cannot be divided into parcels smaller than 80 acres.

The claimants' family first acquired the subject property in 1960, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1960.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6, and 33, were all enacted or adopted after the claimants' family acquired the subject property. These laws restrict the use of the property relative to the uses allowed when the claimants' family acquired the property.

³ The claimants summarily cite numerous state land use laws as applicable to this claim, but do not establish how the laws either apply to the claimants' desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimants' property or do not restrict the use of the claimants' property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimants' use of the subject property, based on the claimants' asserted desired use.

⁴ No information was provided to the department regarding the predominant use of the subject property on January 1, 1993.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have “the effect of reducing the fair market value of the property, or any interest therein.”

Findings of Fact

The claim includes an estimate of \$2 million as the reduction in the subject property’s fair market value due to the regulations that restrict the claimants’ desired use of the property. This amount is based on the claimants’ assessment of the subject property’s value.

Conclusions

As explained in Section V.(1) of this report, the claimants are Jerry and Maralea Peacore whose family members acquired the subject property in 1960. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants’ family acquired the subject property restrict the claimants’ desired use of the property. The claimants estimate that the effect of the land use regulation(s) on the fair market value of the subject property is a reduction of \$2 million.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department since the claimants’ family acquired the property.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property relative to the uses permitted when the claimants’ family acquired the property, including applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, which Klamath County has implemented through its current FR zone. All of these land use regulations were enacted or adopted after the claimants’ family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimants’ family acquired the property on October 14, 1960. As a result, these laws are not exempt under ORS 197.352(3)(E).

Laws in effect when the claimants' family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$2 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when their family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Maralea Peacore to use the subject property for a use permitted at the time she acquired the property on July 12, 2000, and to allow Jerry Peacore to use the subject property for a use permitted at the time he acquired the property on February 13, 2003.

When Maralea Peacore acquired the property on July 12, 1000, and when Jerry Peacore acquired it on February 13, 2003, the property was zoned FR by Klamath County and subject to the current lot size and dwelling standards under Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, and as described in Section V.(2) of this report.

In addition to provisions of Goals 3 and 4, ORS 215 and OAR 660, division 6 and 33 in effect when the claimants acquired the subject property, there may be other laws that apply to the claimants' use of the property that have not been identified in the claim. This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property, based on the uses that the claimants have identified. There may be other laws

that currently apply to the claimants' use of the subject property, and that may continue to apply to the claimants' use of the property, that have not been identified in the claim. Similarly, this report only addresses the exemptions provided for under ORS 1297.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Jerry and Maralea Peacore's division of the 20-acre subject property two- to five-acre parcels and to their development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, enacted or adopted after the claimants acquired the subject property. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when Maralea Peacore acquired the property on July 12, 2000, and when Jerry Peacore acquired the property on February 13, 2003. The department acknowledges that the relief to which the claimants are entitled under ORS 197.352 will not allow them to use the subject property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect when Maralea Peacore acquired the property on July 12, 2000, and when Jerry Peacore acquired it on February 13, 2003. On July 12, 2000 and on February 13, 2003, the property was subject to the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, currently in effect.
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the amended order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimants under the terms of the amended order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under

ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this amended order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 3, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT OF
THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR)	AMENDED FINAL ORDER C
COMPENSATION UNDER ORS 197.352)	CLAIM NO. M122713
(BALLOT MEASURE 37) OF)	
Denise Diane Mathis, CLAIMANT)	

Claimant: Denise Diane Mathis (the Claimant)

Property: Township 40S, Range 10E, Section 8, Tax lots 102 and 200¹, Klamath County
(the Property)

Claim: The demand for compensation and any supporting information received from the
Claimant by the State of Oregon (the Claim).

Claimant submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This amended order is based on the record herein, including the Findings and Conclusions set forth in the Amended Final Staff Report and Recommendation of DLCD (the DLCD Report) attached to and by this reference incorporated into this amended order.

AMENDED ORDER

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Denise Diane Mathis' 1) division of 15.23-acre tax lot 102 into two- to five-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, and 2) division of 4.77-acre tax lot 200 into two- to five-acre parcels for residential development: applicable provisions of Goal 14 and OAR 660-004-0040, enacted or adopted after the claimant acquired the property. These land use regulations will not apply to the claimant only to the extent necessary to allow the claimant to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on July 12, 2000. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the property in the manner set forth in the claim.
2. The action by the State of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect on July 12, 2000. On that date, tax lot 102 was subject

¹ The claim identifies the subject property as Township 40S, Range 10E, Section 8, tax lots 200 and 801. However, based on maps and a preliminary title report submitted with the claim, the claim appears to be for tax lots 102 and 200. Tax lot 801 is addressed as a part of staff report A.

to compliance with Klamath County's acknowledged comprehensive plan and applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33 currently in effect; and tax lot 200 was subject to Klamath County's acknowledged comprehensive plan and R5 zone and applicable provisions of Goal 14 implemented through that zone.

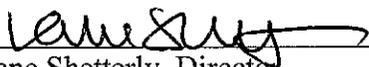
3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license or other form of authorization or consent, the amended order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the amended order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

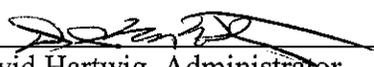
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this amended order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

This Amended Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Deputy Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

FOR DLCD AND THE LAND
CONSERVATION AND
DEVELOPMENT COMMISSION:


Lane Shetterly, Director
DLCD
Dated this 19th day of April, 2007.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 19th day of April, 2007.

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352², the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that “[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost.”

² By order of the Marion County Circuit Court, “all time lines under Measure 37 [were] suspended indefinitely” on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION
OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Amended Final Staff Report and Recommendation

April 19 2007

STATE CLAIM NUMBER: M122713
Report C¹

NAME OF CLAIMANT: Denise Diane Mathis

MAILING ADDRESS: 13751 Hill Road
Klamath Falls, Oregon 97603

PROPERTY IDENTIFICATION: Township 40S, Range 10E, Section 8
Tax lots 102 and 200²
Klamath County

DATE RECEIVED BY DAS: October 11, 2005

180-DAY DEADLINE: August 26, 2006³

I. SUMMARY OF CLAIM

The claimant, Denise Diane Mathis, seeks compensation in the amount of \$2 million for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimant desires compensation or the right to divide the 20-acre subject property, including tax lot 102 (15.23 acres) and tax lot 200 (4.77 acres), into two- to five-acre parcels and to develop a dwelling on each parcel. The subject property is located at 13751 Hill Road, near Klamath Falls, in Klamath County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department not apply to Denise Diane Mathis' 1) division of 15.23-acre tax lot 102 into two- to five-acre

¹ Sixteen tax lots were identified in claim M122713. This staff report only addresses the tax lots identified above. The remaining tax lots are addressed in companion staff reports A and B.

² The claim identifies the subject property as Township 40S, Range 10E, Section 8, tax lots 200 and 801. However, based on maps and a preliminary title report submitted with the claim, the claim appears to be for tax lots 102 and 200. Tax lot 801 is addressed as a part of staff report A.

³ This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

parcels and to her development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), ORS 215 and Oregon Administrative Rules (OAR) 660, divisions 6, and 33, and 2) division of 4.77-acre tax lot 200 into two- to five-acre parcels for residential development: applicable provisions of Goal 14 (Urbanization) and OAR 660-004-0040, enacted or adopted after the claimant acquired the property. These land use regulations will not apply to the claimant only to the extent necessary to allow the claimant to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on July 12, 2000. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use tax lot 102 in the manner set forth in the claim. (See the complete recommendation in Section VI. of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On June 8, 2006, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, one written comment was received in response to the 10-day notice. The comment is relevant to when the claimant became the present owner of the subject property and has been considered by the department in preparing this report. (See comment letter in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on October 11, 2005, for processing under OAR 125, division 145. The claim identifies "all land use regulations and laws enacted after October 24, 1960" as the basis for the claim. Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The claimant’s parents, Clyde L. and Georgia R. Dehlinger, acquired the subject property on October 14, 1960, as reflected by a warranty deed included with the claim. On December 15, 1986, the Dehlingers transferred the property to themselves as trustees of the Clyde L. Dehlinger Trust and the Georgia C. Dehlinger Trust. Under the terms of the trusts, the claimant, Denise Diane Mathis, and Maralea Peacore, were designated to serve as successor trustees when and if the Dehlingers both were unable to serve. An Attorney’s Certification, dated July 12, 2000, confirms that as of July 12, 2000, Clyde Dehlinger was deceased and Georgia Dehlinger was unable to serve as trustees and, therefore, the claimant Denise Diane Mathis and Maralee Peacore were serving as co-trustees.⁴ A January 11, 2005, preliminary title report submitted with the claim establishes the claimant’s current ownership of the subject property.

Conclusions

The claimant, Denise Diane Mathis, is an “owner” of the subject property as that term is defined by ORS 197.352(11)(C) as of July 12, 2000. Clyde L. and Georgia R. Dehlinger are “family members” as defined by ORS 197.352(11)(A) and acquired the subject property on October 14, 1960.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant’s use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

⁴ On March 4, 2003, the trustees conveyed the property to claimant Denise Diane Mathis and Dan T. Mathis, husband and wife. Dan T. Mathis is not a claimant under this ORS 197.352 demand.

Findings of Fact

The claim indicates that the claimant desires to divide the 20-acre subject property into two- to five-acre parcels and to develop a dwelling on each parcel, and that the use is not allowed under current regulations.⁵

The claim is based generally on the applicable provisions of state law that require farm/forest and rural residential zoning and restrict uses in those zones.

Tax lot 102 is zoned Forestry Range (FR) by Klamath County, which is a mixed agricultural and forest land zone, as required by Goal 4 and the implementing provisions of OAR 660-006-0050 (effective on February 5, 1990), subsequently amended on March 1, 1994, to comply with the provisions of House Bill 3661 (Chapter 792, Oregon Laws 1993).

Under OAR 660-006-0050, all the uses permitted under Goals 3 and 4 are allowed in mixed agriculture and forest zones except that for dwellings, either the Goal 3 or 4 standards are applicable based on the predominant use of the tract on January 1, 1993.⁶ Depending on the predominant use on that date, the property is subject to either the requirements for dwellings applicable under exclusive farm use zoning required by Goal 3 and OAR 660, division 33, or forest zone provisions required by Goal 4 and OAR 660, division 6.

For land divisions, OAR 660-006-0055 authorizes the creation of new parcels based on the standards applicable to farm or forest zones that implement the 80-acre minimum lot size specified in ORS 215.780. Under ORS 215.780(2)(a), the minimum lot size in Klamath County's FR zone is 80 acres. The claimant's property cannot be divided into parcels smaller than 80 acres.

Tax lot 200 is zoned R5 by Klamath County. The county's R5 zone is a rural residential zone consistent with Goal 14, which generally requires that land outside of urban growth boundaries be used for rural uses.

Goal 14 was effective on January 25, 1975, and requires that local comprehensive plans identify and separate urbanizable land from rural land in order to provide for an orderly and efficient transition from rural to urban land use. In 2000, as a result of a 1986 Oregon Supreme Court decision,⁷ the Commission amended Goal 14 and adopted OAR 660-004-0040 (Application of Goal 14 to Rural Residential Areas), which was effective on October 4, 2000.

OAR 660-004-0040 states that if a county rural residential zone in effect on October 4, 2000, specifies a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or exceed the minimum lot size that is already in effect (OAR 660-004-0040(7)(c)). Some relief

⁵ The claimant summarily cites numerous state land use laws as applicable to this claim, but does not establish how the laws either apply to the claimant's desired use of the subject property or restrict its use with the effect of reducing its fair market value. On their face, most of the regulations either do not apply to the claimant's property or do not restrict the use of the claimant's property in a manner that reduces its fair market value. This report addresses only those regulations that the department finds are applicable to and restrict the claimant's use of the subject property, based on the claimant's asserted desired use.

⁶ No information was provided to the department regarding the predominant use of the property on January 1, 1993.

⁷ *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447 (1986).

from this provision is available for lots or parcels having more than one permanent habitable dwelling pursuant to OAR 660-004-0040(7)(h). The rule also provides that a county's minimum lot size requirement in a rural residential zone shall not be amended to allow a smaller minimum lot size without approval of an exception to Goal 14 (OAR 660-04-0040(6)). Because Klamath County's residential zone was in effect on October 4, 2000, and requires a minimum lot size of five acres, the minimum lot size for any new lot or parcel must equal or exceed five acres.

The claimant's family first acquired the subject property in 1960, prior to the adoption of the statewide planning goals and their implementing statutes and regulations. No county zoning applied to the subject property in 1960.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by Goal 4 for lands zoned for mixed farm-forest use and the statutory and rule restrictions under applicable provisions of ORS 215 and OAR 660, divisions 6, and 33, and the minimum lot size requirements for rural residential lots or parcels established by amendments to Goal 14 and OAR 660-004-0040 were all enacted or adopted after the claimant's family acquired the subject property. These laws restrict the use of the property relative to the uses allowed when the claimant's family acquired the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of \$2 million as the reduction in the subject property's fair market value due to the regulations that restrict the claimant's desired use of the property. This amount is based on the claimant's assessment of the subject property's value.

Conclusions

As explained in Section V.(1) of this report, the claimant is Denise Diane Mathis whose family members acquired the subject property in 1960. Under ORS 197.352, the claimant is due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimant's family acquired the subject property restrict the claimant's desired use of the property. The claimant estimates that the effect of the land use regulation(s) on the fair market value of the subject property is a reduction of \$2 million.

Without an appraisal or other documentation, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the subject property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a

result of land use regulations enforced by the Commission or the department since the claimant's family acquired the property.

4. Exemptions Under ORS 197.352

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property relative to the uses permitted when the claimant's family acquired the property, including applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660-004-0040 and OAR 660, divisions 6, and 33, which Klamath County has implemented through its current FR and R5 zones. All of these land use regulations were enacted or adopted after the claimant's family acquired the subject property.

Conclusions

It appears that none of the general statutory, goal and rule restrictions on residential division and development of the subject property were in effect when the claimant's family acquired the property on October 14, 1960. As a result, these laws are not exempt under ORS 197.352(3)(E). Laws in effect when the claimant's family acquired the subject property are exempt under ORS 197.352(3)(E) and do not provide a basis for compensation. In addition, other land use laws enacted or adopted for a purpose set forth in ORS 197.352(3)(A) to (D) are also exempt and would not provide a basis for compensation.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced one or more laws that restrict the use of the property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimant's desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$2 million. However, because the claim does not provide an appraisal or other relevant evidence demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation due for this claim, it would also be necessary to verify whether or the extent to

which the claimant's desired use of the property was allowed under the standards in effect when the claimant's family acquired the property. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Denise Diane Mathis to use the subject property for a use permitted at the time she acquired the property on July 12, 2000.

When the claimant acquired tax lot 102, it was subject to Klamath County's acknowledged Forest Range (FR) zone and the applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33, currently in effect, as described above in Section V.(2) of this report.

When the claimant acquired tax lot 200, it was subject to Klamath County's acknowledged comprehensive plan and R5 zone, which required a minimum of 5 acres for the creation of a new lot or parcel. Residential development of the subject property at that time would have been subject to the provisions of the county's acknowledged plan and R5 zone, including the provisions of Goal 14 implemented by those regulations.

In addition to the applicable provisions of Goals 3, 4 and 14, ORS 215 and OAR 660, divisions 6 and 33, in effect when the claimant acquired the property, there may be other laws that apply to the claimant's use of the property that have not been identified in the claim. This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the uses that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in their claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Denise Diane Mathis' 1) division of 15.23-acre tax lot 102 into two- to five-acre parcels and to her development of a dwelling on each parcel: applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6, and 33, and 2) division of 4.77-acre tax lot 200 into two- to five-acre parcels for residential development: applicable provisions of Goal 14 and OAR 660-004-0040, enacted or adopted after the claimant acquired the property. These land use regulations will not apply to the claimant only to the extent necessary to allow the claimant to use the subject property for the use described in this report, and only to the extent that use was permitted when she acquired the property on July 12, 2000. The department acknowledges that the relief to which the claimant is entitled under ORS 197.352 will not allow the claimant to use the property in the manner set forth in the claim.

2. The action by the State of Oregon provides the state's authorization to the claimant to use the property subject to the standards in effect on July 12, 2000. On that date, tax lot 102 was subject to compliance with Klamath County's acknowledged comprehensive plan and applicable provisions of Goals 3 and 4, ORS 215 and OAR 660, divisions 6 and 33 currently in effect; and tax lot 200 was subject to Klamath County's acknowledged comprehensive plan and R5 zone and applicable provisions of Goal 14 implemented through that zone.

3. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the property may not be used without a permit, license or other form of authorization or consent, the amended order will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the property imposed by private parties.

4. Any use of the property by the claimant under the terms of the amended order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimant to use the property, it may be necessary for her to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this amended order relieves the claimant from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the property by the claimant.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on August 3, 2006. OAR 125-145-0100(3), provided an opportunity for the claimant or the claimant's authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.